

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Stephen Benjamin COURTNEY

Serial No.: 10/523,246

Patent No.: 7,600,292

Filing Date: January 27, 2005

Issue Date: October 13, 2009

For: SURFACE TREATING APPLIANCE

Examiner: Lee D. Wilson

Group Art Unit: 3727

Confirmation No.: 8800

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37
CFR 1.705(d)

MS Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant has calculated the patent term adjustment ("PTA") for this application and has found it to be **1004** days rather than 722 days as stated in Patent Term Adjustment History (the History) in PAIR, a copy of which is attached to this Request. The Office delayed this application 816 days under 35 USC 154(b)(1)(A) ("subsection A"), as indicated properly in the History. However, the Office does not note that it delayed this application by an additional 282 days under 35 USC 154(b)(1)(B) ("subsection B"), for which applicant is entitled to a further term adjustment.

Applicant explained this deficiency in the PTA calculation in the Request filed June 26, 2009. However, the Office dismissed the Request as premature and advised applicant that applicant "wait until the time of issuance of the patent and file a request for reconsideration of

the patent term adjustment pursuant to 37 CFR 1.705(d).” Decision on Application for Patent Term Adjustment, page 2. Accordingly, applicant files this Request under 37 CFR 1.705(d) within two months of the issue date of the patent, October 13, 2009. The Commissioner is authorized to charge any necessary fees to Deposit Account No. 03-1952.

Under 35 USC 154(b)(2)(A), to the extent that periods of delay attributable to the grounds specified in subsections A and B overlap, the PTA “shall not exceed the actual number of days the issuance of the patent was delayed.” In *Wyeth v. Dudas*, 88 USPQ.2d 1538 (D.D.C. 2008), the district court held that periods of delay in subsections A and B overlap only if they occur on the same calendar day. *Id.* at 1546. Thus, if an application is delayed under subsection B, that delay must be accounted for in addition to any delay attributable to subsection A to the extent that it does not overlap the delay attributable to subsection A.

The Office’s delay under subsection B is 427 days as calculated between January 27, 2008 (three years after the filing date) and the March 29, 2009 (the date of the RCE). However, this delay overlaps with the 816 day delay under subsection A by 145 days as calculated between January 27, 2008 (three years after the filing date) and June 20, 2008 (the date of the first Office Action). Therefore, applicant is entitled to an additional 282 day adjustment (427 days minus 145 days) under subsection B. Accordingly the PTA is 1004 days, i.e., 816 days plus 282 days minus 94 days which the Office found as the delay attributable to applicant.

Accordingly, the PTA should be **1004** days. Recalculation of the patent term adjustment is respectfully requested.


In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions

for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing 424662010100.

Respectfully submitted,

Dated: November 18, 2009

By:


Takamitsu Fujita
Registration No. 63,971

Morrison & Foerster LLP
1650 Tysons Boulevard, Suite 400
McLean, VA 22102-3915
Telephone: (703) 760-7751
Facsimile: (703) 760-7777

10/523,246 SURFACE TREATING APPLIANCE

11-17-
2009::16:17:12**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/523,246

Filing or 371(c) Date:	01-27-2005	USPTO Delay (PTO) Delay (days):	816
Issue Date of Patent:	10-13-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	94
Post-Issue Petitions (days):	+0	Total PTA (days):	722
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
09-23-2009	PTA 36 Months		
10-13-2009	Patent Issue Date Used in PTA Calculation		
09-10-2009	Dispatch to FDC		
09-09-2009	Application Is Considered Ready for Issue		
09-02-2009	Issue Fee Payment Verified		
09-04-2009	Mail Miscellaneous Communication to Applicant		
09-04-2009	Miscellaneous Communication to Applicant - No Action Count		
09-02-2009	Issue Fee Payment Received		
06-18-2009	Information Disclosure Statement considered		
07-29-2009	Pubs Case Remand to TC		
07-27-2009	Mail-Petition Decision - Dismissed		
07-27-2009	Petition Decision - Dismissed		
06-26-2009	Petition Entered		
06-18-2009	Information Disclosure Statement (IDS) Filed		79
06-18-2009	Information Disclosure Statement (IDS) Filed		
06-12-2009	Mail Miscellaneous Communication to Applicant		
06-11-2009	Miscellaneous Communication to Applicant - No Action Count		
06-02-2009	Mail Notice of Allowance		
05-14-2009	Information Disclosure Statement (IDS) Filed		
05-03-2009	Document Verification		
05-03-2009	Notice of Allowance Data Verification Completed		
05-03-2009	Case Docketed to Examiner in GAU		
03-23-2009	Date Forwarded to Examiner		
03-23-2009	Date Forwarded to Examiner		
03-09-2009	Request for Continued Examination (RCE)		
03-23-2009	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
03-10-2009	Workflow - Request for RCE - Begin		
02-10-2009	Mail Examiner Interview Summary (PTOL - 413)		
02-04-2009	Examiner Interview Summary Record (PTOL - 413)		
12-24-2008	Mail Final Rejection (PTOL - 326)		
12-22-2008	Final Rejection		
12-16-2008	Information Disclosure Statement considered		
07-10-2008	Information Disclosure Statement considered		
10-02-2008	Information Disclosure Statement considered		

12-16-2008	Information Disclosure Statement (IDS) Filed	
10-14-2008	Paralegal TD Accepted	
09-17-2008	Terminal Disclaimer Filed	
10-02-2008	Reference capture on IDS	
10-02-2008	Information Disclosure Statement (IDS) Filed	15
10-10-2008	Date Forwarded to Examiner	↑
09-17-2008	Response after Non-Final Action	↑
10-07-2008	Case Docketed to Examiner in GAU	
10-02-2008	Information Disclosure Statement (IDS) Filed	
07-10-2008	Reference capture on IDS	
07-10-2008	Information Disclosure Statement (IDS) Filed	
07-10-2008	Information Disclosure Statement (IDS)' Filed	
06-20-2008	Mail Non-Final Rejection	816
06-18-2008	Non-Final Rejection	↑
01-27-2005	Information Disclosure Statement considered	↑
05-19-2005	Information Disclosure Statement considered	↑
08-30-2007	Information Disclosure Statement considered	↑
10-16-2007	Information Disclosure Statement considered	↑
02-13-2008	Information Disclosure Statement considered	↑
05-06-2008	Case Docketed to Examiner in GAU	↑
04-17-2008	Case Docketed to Examiner in GAU	↑
02-13-2008	Reference capture on IDS	↑
02-13-2008	Information Disclosure Statement (IDS) Filed	↑
02-13-2008	Information Disclosure Statement (IDS) Filed	↑
10-16-2007	Reference capture on IDS	↑
10-16-2007	Information Disclosure Statement (IDS) Filed	↑
10-17-2007	Withdraw Flagged for 5/25	↑
10-16-2007	Information Disclosure Statement (IDS) Filed	↑
10-15-2007	Flagged for 5/25	↑
10-04-2007	Case Docketed to Examiner in GAU	↑
08-30-2007	Information Disclosure Statement (IDS) Filed	↑
08-30-2007	Electronic Information Disclosure Statement	↑
05-29-2007	Case Docketed to Examiner in GAU	↑
05-19-2005	Reference capture on IDS	↑
05-19-2005	Information Disclosure Statement (IDS) Filed	↑
05-19-2005	Information Disclosure Statement (IDS) Filed	↑
01-27-2005	Request for Foreign Priority (Priority Papers May Be Included)	↑
01-27-2005	Reference capture on IDS	↑
01-27-2005	Information Disclosure Statement (IDS) Filed	↑
01-27-2005	Information Disclosure Statement (IDS) Filed	↑
01-27-2005	Preliminary Amendment	↑
07-20-2005	IFW TSS Processing by Tech Center Complete	↑
07-20-2005	Case Docketed to Examiner in GAU	↑
06-28-2005	Cleared by OIPE CSR	↑

01-27-2005	371 Completion Date
06-03-2005	Application Dispatched from OIPE
06-06-2005	Notice of DO/EO Acceptance Mailed
01-27-2005	Initial Exam Team nn



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